

ESTTA Tracking number: **ESTTA678251**

Filing date: **06/15/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217235
Party	Defendant Voice Proctor, Inc.
Correspondence Address	MATTHEW BYCER 717 E MARYLAND AVE PHOENIX, AZ 85014-1561 UNITED STATES mbycer@gmail.com;matt@nationalparalegal
Submission	Motion to Dismiss 2.132
Filer's Name	Matthew L. Bycer
Filer's e-mail	matt@nationalparalegal.edu, mbycer@gmail.com
Signature	/Matthew L. Bycer/
Date	06/15/2015
Attachments	VP_Motion_and_Response.pdf(161861 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85/924,667

Filed May 6, 2013

For the Trademark VOICE PROCTOR

Published in the Official Gazette on January 7, 2014

FINANCIAL INDUSTRY REGULATORY)	
AUTHORITY, INC.)	
)	
Opposer,)	Opposition No. 91217235
)	
v.)	MOTION FOR DISMISSAL
)	37 C.F.R. §2.132(a)
VOICE PROCTOR, INC.,)	
)	
Applicant.)	
_____)	

APPLICANT'S MOTION FOR DISMISSAL
BASED UPON OPPOSER'S FAILURE TO PROVE CASE
AND
RESPONSE TO OPPOSER'S MOTION FOR EXTENSION

I. Applicant's Motion for Dismissal

Pursuant to 37 C.F.R. § 2.132(a), Applicant moves for judgment based upon Opposer's failure to prove case. TBMP §535.02. Plaintiff's/Opposer's Testimony Period has passed, and Opposer has not given any testimony or offered any other evidence. Opposer failed to prosecute this case by failing to submit any Initial Disclosure(s), conduct any Discovery, provide any Pre-Trial Disclosures, or present any Testimony. Applicant has been harmed by the delay in registration of its mark, and wishes to save the expense and delay of continuing with the trial when Opposer failed to offer any evidence before, or during, Plaintiff's testimony period.

II. Opposer's Motion for Extension of Time

A. Opposer Lacks Good Cause

Opposer mischaracterizes the status of negotiation in Opposer's statement of "good cause." Opposer erroneously asserts that "the parties are engaged in settlement

discussions.” True, both parties attempted, in good faith, to settle this issue beginning as early as **January 2014**. Opposer filed for extensions for time to oppose on February 6, 2014, March 6, 2014, and May 6, 2014 (with Applicant’s consent). Opposer and Applicant were engaged in settlement discussions until **August 21, 2014**, when Applicant’s counsel sent an email to Opposer’s counsel stating:

[O]ur client was unable to accept all of your proposed changes. Attached is [Applicant’s] final mark-up. We do not believe our client, or [Opposer], will benefit from any additional clarifying changes. Please speak with [Opposer] and let us know whether or not [Opposer] can commit to this agreement.

Opposer did not respond to Applicant’s proposed offer of settlement agreement of 8/21/14 for nearly six months, until **February 19, 2015**. Opposer then sent an email to Applicant, asking if Applicant would agree to Opposer’s renewed, and previously countered, settlement offer from 8/19/14!

Applicant responded promptly, on February 23, 2015, with Applicant’s 8/21/14 renewed final offer of settlement, which “represent[ed] a negotiated agreement in the works for over four months.” In this email, Applicant invited Opposer to respond “to clarify the situation.” ***Opposer effectively withdrew from settlement negotiations in February 2015.***

B. Opposer Failed to Request a Timely Suspension

Pursuant to Board Notice dated July 7, 2014, Plaintiff’s 30-day Trial Period Ended June 12, 2015. At no time during the Discovery or Testimony periods did Opposer file for a suspension of the proceedings under TBMP §605.2.

C. Opposer’s Failure to Request Stipulation is Indicative of Lack of Active Discussions

Opposer failed to seek Applicant’s stipulation prior to filing Opposer’s Motion for an Extension of the Trial Dates (including a requested extension of the Testimony Period) on the final day of the Plaintiff’s Trial Period. Prior to Opposer’s pending Motion, the most recent communication between the parties is dated nearly four months ago. Applicant will not stipulate to such extension now.

III. Conclusion and Remedy Sought

Applicant filed this application for registration more than two years ago. Because the parties are not actively engaged in settlement discussions, and have not been since before the close of discovery, Opposer lacks good and sufficient cause for the requested extension and cannot justly establish excusable neglect. Based upon Opposer's failure to prove case, we respectfully ask this Court to grant Applicant's motion and dismiss this Opposition.

Respectfully Submitted,

/Matthew L. Bycer/

Matthew L. Bycer, Esq.
Jeremy Rovinsky, Esq.
717 E. Maryland Avenue
Phoenix, AZ 85014
Phone: 1-800-371-6105
Email: matt@nationalparalegal.edu
Attorneys for Applicant Voice Proctor, Inc.

CERTIFICATE OF SERVICE

I hereby certify that pursuant to 28 U.S.C. § 1746, that on this 15th day of June, 2015, I cause a true copy of the attached APPLICANT'S MOTION FOR DISMISSAL BASED UPON OPPOSER'S FAILURE TO PROVE CASE AND RESPONSE TO OPPOSER'S MOTION FOR EXTENSION to be served by Electronic Mail upon:

Victoria J. B. Doyle
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004-1980
Victoria.Doyle@friedfrank.com

/Matthew L. Bycer/
Matthew L. Bycer

CERTIFICATE OF ELECTRONIC MAILING

I hereby certify that the foregoing APPLICANT'S MOTION FOR DISMISSAL BASED UPON OPPOSER'S FAILURE TO PROVE CASE AND RESPONSE TO OPPOSER'S MOTION FOR EXTENSION is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this June 15, 2015.

/Matthew L. Bycer/

Matthew L. Bycer